



NCA 13-266

CLASSIFICATION: #43. OIL AND GAS

**A LAW OF THE MUSCOGEE (CREEK) NATION CREATING NEW LAW IN TITLE 43,
TITLED OIL AND GAS**

Be it enacted by the National Council of the Muscogee (Creek) Nation;

SECTION ONE. FINDINGS. The National Council finds that:

A. The Muscogee (Creek) Nation and its citizens currently rely upon the Bureau of Indian Affairs for the valuation, lease monitoring, payment distribution and general monitoring of all aspects of Oil and Gas production from Trust and Restricted Lands. The Muscogee (Creek) Nation finds that the Nation through its Constitution has Political Jurisdiction over the Lands that are within the Territorial Boundaries of the Muscogee (Creek) Nation and allows for the Muscogee (Creek) Nation to exercise its inherent and enumerated powers of the Muscogee (Creek) Nation.

B. The Muscogee (Creek) Nation through its Constitution has the authority to enact laws governing the development of the Nations lands and Natural Resources. Likewise the Nation has the authority to enforce such laws that are enacted, with the intentions of preserving the inherent and enumerated powers of the Muscogee (Creek) Nation. Such enacted laws do not require the approval of the Secretary of Interior.

C. The Bureau of Indian Affairs has failed to comply with its obligatory trust and fiduciary duties to the Muscogee (Creek) Nation and its citizens through poor records management, poor lease monitoring, poor lease negotiations, and a general inability to care for the interest of the Muscogee (creek) Nation and its citizens and meet the responsibilities of a trustee.

D. The Muscogee (Creek) Nation desires to provide these services for itself and its citizens, because the Muscogee (Creek) Nation can meet or exceed these standards, and will direct its own future in relation to Oil and Gas produced within its Jurisdiction.

E. This will create a positive atmosphere that is beneficial to the Muscogee (Creek) Nation and the individuals that it serves, as negotiations will be more favorable, payment processing will be efficient and the Nation or agents of the Nation will conduct the overall monitoring of activity.

SECTION TWO. NEW LAW. The following new law shall be codified in Title 43 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said new law and its inclusion in pocket parts for the Code of Laws of the Muscogee (Creek) Nation, the Codification Committee is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated in this law in order to be consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws; and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following new law:

CHAPTER 1. MUSCOGEE (CREEK) NATION OIL AND GAS DEPARTMENT

§ 1-101. Definitions

A. "Applicant" means the person requesting permission to conduct oil and gas operations within the Territorial Jurisdiction of the Muscogee (Creek) Nation.

B. "BIA" means the Bureau of Indian Affairs of the United States Department of Interior.

C. "BLM" means the Bureau of Land Management of the United States Department of Interior.

D. "Non-Compliance" means any neglect, failure or refusal to perform an act required by agreements or conditions of permitting authorized by the Nation.

E. "Oil and Gas Department" means the Nation's Oil and Gas Department, which has attendant powers and administrative authorities created pursuant to National Council Acts.

F. "Oil and Gas Permit" means the issuance of a permit by the Oil and Gas

Department of the Muscogee (Creek) Nation.

G. "Oil and Gas Activities" means any activity of any person within the Nation that constitutes or materially assists:

1. The exploration for, development, production, treatment, processing, refining, transportation, sale of oil, natural gas or other Hydrocarbon Materials.
2. The Manufacturing of any product using oil, natural gas, natural gas liquids, hydrocarbon products or hydrocarbons as a raw material or component; or
3. Any activity authorized by a lease issued under the Indian Mineral Leasing Act of 1938, 25 U.S.C. Sect. 396a-396g or by a contract entered into by the Nation under the Indian Mineral Development Act of 1982, 25 U.S.C. Sect 2102-2108.

H. "Permit Holder" means the holder of an oil and gas permit issued under the authority of this title.

I. "Person" means any individual, partnership, firm, company, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or its legal representative, agents or assigns, including the Nation, citizens of the Nation and any corporation or other enterprise owned by the Nation or any of its citizens.

J. "Violation" means the breach of any right, duty, requirement or provision.

§ 1-102. Muscogee (Creek) Nation Oil and Gas Department created

There is hereby created by act of the National Council, the Muscogee (Creek) Nation Oil and Gas Department under the authority of the Secretary of Interior Affairs. This department will have inherent authorities to monitor lease compliance, production reporting, damage assessments, lease negotiations, payment of royalties and other matters that relate to the harvesting of Oils and Gas from lands under the Jurisdiction of the Muscogee (Creek) Nation.

§ 1-103.

The Oil and Gas Department is authorized to issue, regulate, and enforce the requirements of oil and gas operating permits, and other regulations that may be adopted in the future.

This shall be interpreted and applied such that the Nation has exercised its inherent authority and enumerated powers to regulate and govern to the fullest extent permitted by the Nation's Constitution and federal applicable law. The Nation's Law shall be applied and enforced in its courts, excepted when the extent of federal law preempts a specific exercise of the Nation's Authority as ordered by a federal court.

§ 1-104. Oil and Gas Operating Permit Required

No person shall engage in any oil and gas activity within the Nation without first obtaining and maintaining in good standing an oil and gas operating permit.

§ 1-105. Application for Oil and Gas Operating Permit

Every person applying for an oil and gas operating permit shall submit to the Oil and Gas Department:

A. A completed application for an oil and gas operating permit. The application shall include a copy of the most recent or current permit, regardless of issuer. If a permit is not renewed prior to expiration; the Oil and Gas Department shall impose a processing fee in an amount established by the Secretary of Interior

B. Satisfactory proof that the applicant has obtained a security bond or insurance from a company authorized to act as surety and acceptable to the Oil and Gas Department, for the activities covered by the permit in an amount set by the Oil and Gas Department and Secretary of Interior.

C. A company profile or portfolio shall be submitted, including years of operation, types of operations, locations of operations, disclosure of litigation that is less than ten (10) years recent, all names that the company used as Doing Business As.

D. Description and location of the premises where oil and gas activity will be conducted;

E. Description of the oil and gas activity to be conducted;

F. If the Applicant is a corporation, limited liability company or other similar business entity, a copy of the corporate charter and other organizational documents issued by the state, country or other government in which it is organized; the company shall also seek charter through the Secretary of Nation to incorporate. The applicant shall disclose all parent companies its' affiliated with, all subsidiaries that its' involved with and all partners whether minor or principle owners. This shall be submitted in a certified and sworn written statement to the oil and gas department.

G. By signing the application the applicant agrees to abide by all laws that pertain to this chapter and all laws that apply to the jurisdiction of the Muscogee (Creek) Nation or commerce of the Nation.

H. Applicant shall affirm that they are not an employee or agent of the federal government;

I. Application permit fee shall be set by the Oil and Gas Department manager and the Secretary of Interior Affairs; however the amount shall not be less than \$1,000.00

J. All permit fees that are received shall be deposited into an revolving account for the purpose of continuing operations for the oil and gas department and shall be expended for only such purposes, expenditures must be authorized by the conditions set by the annual budget approved by the National Council

K. The office of Tax Commissioner shall establish fair tax rates that will be applied to the producer and not to the landowner(s) or minerals (subsurface) owner(s).

L. Permit holder shall make available any report requested by the Nation and shall also provide annual production reports to the Oil and Gas Department.

§ 1-106. Conditions of Permit

Each oil and gas permit shall contain the following conditions:

A. The permit shall be for a term of one (1) year; renewable annually upon payment of the annual permit fee and update of all information required to be filed. If a completed application to renew the permit is received by the Oil and Gas Department at least thirty (30) days prior to expiration then the permit fee renewal shall be \$1,000.00. If the permit renewal application is not received thirty (30) days prior to the expiration,

then additional fees shall be applied to the permit, plus fees for operating without a current permit shall apply.

B. The applicant or permit holder shall notify the Oil and Gas Department of bankruptcy, receivership or any material change in financial condition of the applicant which may render the applicant or permit holder subject to the bankruptcy or receivership laws of the United States.

C. All premises covered by the permit shall:

1. Be construed and maintained in a safe and clean manner so as to protect the public health and safety and the health and safety of all employees, contractors, or other person present on the premises;
2. Be open to inspection by the Muscogee (Creek) Nation, BIA, BLM and any other agency of the Nation having jurisdiction over any activity on the premises; and
3. Be maintained and operated in compliance with all applicable laws and regulations of the Nation and the United States.

D. Upon request, either oral or written, by any Agent of the Oil and Gas Department or Enforcement Agent or Officer of the Muscogee (Creek) Nation, permit holders shall make the permit or a certified copy thereof available for inspection and copying.

E. Any permit holder shall maintain insurance or bonding in amounts that satisfactorily protect the Nation and the people of the Nation.

F. All oil and gas activity shall conform to the applicable laws and regulations of the Muscogee (Creek) Nation and the United States, including without limitation the provisions of any oil and gas development plan approved by the Nation.

G. All oil and gas activity shall be constructed so as to give preference to Tribal Employment and contracting as required by the Law of the Muscogee (Creek) Nation.

H. The permit is non-transferable.

I. Fines for spillage of crude oil or venting of natural gas shall not exceed the maximum rate set by any federal or state law or regulation.

§ 1-107. Suspension or Cancellation of Permit

An oil and gas operating permit may be suspended, cancelled or not renewed for any of the following reasons:

A. Filing an application or submitting to the Nation any Document that is incomplete, false, fraudulently generated or misleading;

B. Non-payment of the permit application fee or any other payment owing to the Nation or an Individual Member of the Nation and arising from any activity covered by the permit, including rentals, royalties, taxes, fees, penalties or other assessments;

C. Noncompliance with or violation of any regulation imposed by the Nation or Rule imposed by the Secretary of Interior or the United States governing oil and gas operations in/on the Nation;

D. Noncompliance with or violation of Environmental codes of the Nation or the United States;

E. Noncompliance with or violation of any condition of the permit;

F. Other grounds considered adequate and just by the Oil and Gas Department or Secretary of Interior for suspension or cancellation of the permit.

§ 1-108. Enforcement

A. *Notice of Noncompliance:* any person found by the Oil and Gas Department to be in noncompliance with or in violation of the permit or any provision of Muscogee (Creek) Nation Law as related to the Natural Resources shall be issued a notice of noncompliance by the Oil and Gas Department. The notice shall inform the person and or the company the nature of the noncompliance or violation and may include any or all off the following enforcement actions of the Oil and Gas Department, not preempting criminal or civil actions pursuant to Muscogee (Creek) Nation Law.

1. Suspension of the permit and effective upon the date specified in the notice;
2. Revocation of the permit and effective upon the date specified in the notice;
3. An order requiring the person to come into compliance with the permit or requirement that was violated and to cease continued violations of this code;
4. Imposition of a civil penalty, not to exceed \$10,000.00 per day of noncompliance or violation, not including fines for spillage of crude oil or venting of natural gas;
5. An order requiring seizure of property as provided in the Judicial Proceedings Code of the Muscogee (Creek) Nation;
6. An order closing the premises at which the noncompliance or violation is occurring.

B. *Compliance Date on the Order:* the notice of noncompliance shall specify the date, no later than fifteen (15) calendar days after receipt of the notice, by which the person or company in violation must return to compliance and pay all penalties.

C. *Service of Notice:* the notice for noncompliance shall be personally delivered to the registered agent, officer or individual who's name appears on the permit. The Lighthouse and/or Agents of the Oil and Gas Department are authorized to hand deliver such personal service to violators. Additionally, certified United States Mail, with return receipt, shall be sent to the violator and copies of information forwarded to the Attorney General of the Muscogee (Creek) Nation.

D. *Request for Additional Time:* the violator may request additional time to:

1. Commence actions necessary to cure the noncompliance or violation;
2. Pay any civil penalty; and
3. To complete actions necessary to complete actions to cure the noncompliance or violation.

The Oil and Gas Department may at its discretion and upon showing good cause for the request grant additional time, not to exceed fifteen (15) Calendar days to commence actions to complete and additional time as deemed reasonable to cure the violation.

After showing good cause to the Oil and Gas Department, additional time may be extended to pay any penalties.

E. *Compliance:* if compliance is not met after permit holder is given notice and there has been no extension sought or granted, the Oil and Gas Department shall notify the Attorney General and request he proceed with court actions in the Muscogee (Creek) Nation District Court. All matters beyond this action will be determined by the Muscogee (Creek) Nation District Courts and all appeals will be addressed in the same venue. During which time all suspensions of permits will remain effective.

F. *Seizure of Property:* Any property or interest therein in actual or constructive possession of a person or company that has violated or is violating any provision of this chapter or oil and gas operating permit and used in connection with any violation may be seized and held to secure payment of a fine or civil penalty or to be forfeited as provided in Muscogee (Creek) Nation Code. *Seizure under this section shall not require proof that the owner of the property or the interest therein participated in, had knowledge of, or consented to the illegal use of property.*

G. *Persons Authorized to Seize Property:* Property subject to seizure under this section may be seized by any Law Enforcement Officer of the Nation upon issuance of noncompliance communication by the Oil and Gas Department.

H. *Custody of Seized Property:* Property seized under this section shall be held in the custody of the Lighthorse Police or the Attorney General, subject to the orders of the Nations Court, including without limitation orders for sale of the property at public auction to collect penalties assessed and orders issued in a forfeiture proceeding.

I. *Release of Property:*
Unless a forfeiture proceeding concerning property seized under this section is initiated pursuant to Muscogee (Creek) Nation Code, such property shall be released to its owner upon:

1. Payment of the fine and/or penalty for which the property was seized as security
2. Thirty (30) days after seizure of the property and no proceeding initiated to forfeit;
3. Upon finding of the Nation's Courts that such fine or penalty was improper.

J. *Civil Forfeiture Proceedings:*

1. Within thirty (30) days after seizing property the Oil and Gas Department may initiate forfeiture proceedings by and through the Attorney General. The forfeiture complaint shall describe with reasonable specificity the property at issue and the basis for forfeiture.
2. The Nation's Courts shall give written notice of the forfeiture to all known or reasonably ascertained persons with an interest in the seized property, including lien interest. All such persons may answer the complaint and file any adverse claim to the property within thirty (30) days after notice is given, but not thereafter.
3. No less than forty-five (45) days after written notice to all interested persons, the Court shall conduct a hearing to adjudicate whether the property and or any known interests therein have been forfeited to the Nation and shall enter an order of judgment. The Court may deny forfeiture on an interest in property if the owner of the interest proves that he or she took all reasonable measures to prevent the illegal use of property or the person committing the violation obtained possession of the property without his consent.
4. Property forfeited to the Nation and proceeds from the sales thereof shall be retained by the Nation and used to equip and finance the Oil and Gas Department.

**CHAPTER 2. PIPELINE COMPANY EASEMENTS; TRANSPORTATION
OF THE NATION'S IN KIND GAS**

§ 2-101.

Pipeline Companies securing easements for operation of pipelines and other facilities within the Muscogee (Creek) Nation shall be required, as a condition to grants of easements or extensions of easements, for lateral or main pipelines, or other supporting facilities, to deliver, on demand of the Nation from time to time, the Nation's gas for industrial, municipal or domestic use to points on the pipelines of such companies.

§ 2-102.

The Oil and Gas Department of the Nation is authorized and directed to negotiate easements, extension of easements, and delivery of the Nation's gas as provided in this chapter and charges for transportation and delivery of in kind gas shall be considered as part of the consideration for the granting of easements for pipelines and other facilities or extensions of such easements in negotiating with such companies.

§ 2-103.

The pipeline companies shall secure easements for each line, lateral or main, when it is constructed on the lands, including rights-of-way, of the Muscogee (Creek) Nation, operations without granted easements shall be subject to the forfeiture proceedings of this chapter and shall be imposed a penalty of not more than \$10,000.00 per day or \$100,000.00 per month.

§ 2-104.

Easements claimed prior to the enactment of this Code shall have 180 days to apply for extension under the terms of this Code.

CHAPTER 3. OIL AND GAS OPERATING REGULATIONS; ENFORCEMENT

§ 3-101. Authority

A. Enforcement of the Code: The Oil and Gas Department is hereby authorized to enforce the requirements of this code and impose penalties and fees pertaining to such enforcement. The regulatory jurisdiction conferred on the Oil and Gas Department by this Chapter.

B. **Supercession of Federal Regulations:** Nothing in this code shall be interpreted to supplant any federal law, instead allowing for the Nation to exercise to its fullest extent the ability to regulate and govern its own affairs.

C. The oil and gas department shall coordinate with federal agencies related to these activities and when applicable and necessary enter into agreements and MOU's to facilitate the intent and purpose of this Act.

D. **Civil Jurisdiction:** The Muscogee (Creek) Nation without impediment has the pure authority to enforce civil actions on all persons who conduct any oil and gas activity within the Muscogee (Creek) Nation.

**CHAPTER 4. SURFACE PROTECTION REQUIREMENTS IN MUSCOGEE (CREEK)
NATION OIL AND GAS LEASES (EXTENDED TO INDIVIDUAL RESTRICTED
LANDS) AND PUBLIC RIGHTS-OF-WAYS**

§ 4-101. General Stipulations of Surface Area

A. Each lessee shall submit a Site Development Plan for each lease, which shall be subject to the approval of the Oil and Gas Department. Certain areas shall forever remain undisturbed by DRILLING, CONSTRUCTION, TRENCHING OR OTHER MEANS AND METHODS OF THE INDUSTRY.

B. These surface areas include lands that are designated by the Cultural Preservation Office as sacred or by the National Council as public lands for recreational or commercial use.

C. Surface work that is required and provided by the Nation shall be charged to the lessee at a rate comparable to the industry, all work will be to area standards.

D. Prior to the commencement of the drilling of a well the lessee shall have the leased premises adequately marked and surveyed by a licensed surveyor who meets the Federal Surveyor credentials.

E. Any wells drilled that do not produce oil and gas in paying quantities as determined by lessees supervisory authority, but which are capable of producing water satisfactory for domestic, agricultural or livestock use by the surface owners; adjustments of cost for conditioning of the wells and for the value of casing and

equipment left in or on the well will be made in cases where the water is determined satisfactory by the Muscogee (Creek) Nation Environmental Services.

F. Grazing rights to the surface of any lands so leased shall be protected and Muscogee (Creek) Nation rights respecting the use of water shall be unimpaired.

G. Citizens of the Muscogee (Creek) Nation shall be employed in such mining, drilling, exploration and development operations to the fullest extent that their qualifications and Muscogee (Creek) Nation Law permit and every reasonable effort will be made to train citizens of the Nation in the skills and abilities required in such operation to the end that they may be employed in such skilled positions for which they become qualified.

§4-102. Forest and Land Protection; Preservation of Antiquities

A. Protection of Property: Any lessee, operator or its agent shall conduct all operations authorized by any lease with due regard for good land management; shall avoid unnecessary damage to vegetation, timber, crops, or other natural resource, and to improvements such as roads, bridges, cattle guards, gates and fences; shall also prevent soil erosion and make good efforts to demonstrate these practices. All pits associated with the operations shall be lined and fenced; all pipelines shall be buried below plow depth.

B. Reimbursement for Damage: Any lessee, operator or its agent shall pay the surface owner or his tenant for any and all damage to or destruction of property caused by lessees operation. If the permit holder shall fail to respond to Notice from the Oil and Gas Department with an action plan to begin repair or remediation resulting from any oil and gas operation activity; the Nation through its Oil and Gas Department shall solicit bids to cause repair or remediation, all costs associated with the cleanup will be billed to the permit holder or its agents and or interest holders.

C. Water: Water for the use of drilling operations shall not be obtained from existing or new water wells, tanks, springs, stock reservoir, watercourses, or lakes without prior permission from the Nation. A lessee may at his own expense and with the Nations Approval, drill and equip water wells on leased premises and shall upon termination of drilling operations on its leasehold leaves all water producing wells intact and properly cased. If any of such wells shall produce water surplus to the needs of the lessee, such water shall be made available to the Nation. Nothing in the Code

authorizes, allows, or permits the injection of crude oil, natural gas, or "fracking" chemicals into any subsurface location, nor their spillage onto land or in to water.

D. Antiquities: Compliance with the Laws of the Muscogee Creek Nation and Federal Laws that govern the treatment of antiquities shall be incorporated by reference and applied in this Act.

SECTION THREE. PURPOSE. The purpose of this Act is to authorize and implement the Muscogee Creek Nation Oil and Gas Department to monitor lease compliance, production reporting, damage assessments, lease negotiations, payment of royalties, and other related matters in oil and gas production by the Muscogee Creek Nation and for its citizens, as the United States has failed to perform its Trust and Fiduciary duties through the course of time for the Muscogee Creek Nation and its citizens.

SECTION FOUR. APPROPRIATION. The sum of Two Hundred Forty-Nine Thousand, Four Hundred Eighty-Seven and No/100 Dollars (\$249,487.00) is hereby appropriated from the Gaming Fund Account for the implementation of this Act. All unexpended funds appropriated by implementation of this Act shall be returned to the Tribal Treasury and shall be available for future appropriation by the National Council.

SECTION FIVE. AUTHORIZATION. The National Council hereby authorizes the Principal Chief or his designee to expend the sum of Two Hundred Forty-Nine Thousand, Four Hundred Eighty-Seven and No/100 Dollars (\$249,487.00) from the Gaming Fund Account in accordance with the attached budget.

ENACTED by the Muscogee (Creek) National Council on this 26th day of October, 2013.

IN WITNESS WHEREOF, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



Samuel S. Alexander, Speaker
National Council
Muscogee (Creek) Nation

CERTIFICATION

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of Eighteen members with **Fifteen** members attending this meeting on the **26th** day of **October, 2013** and that the above is in conformity with the provisions therein adopted by a vote of **14** in favor, **0** against, and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.



Kristie A. Sewell, Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this **31st** day of **Oct**, **2013** to the above Law, **NCA 13-266** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.



George Tiger, Principal Chief
Muscogee (Creek) Nation

